



In Reply Refer To:
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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Texas Coastal Ecological Services Field Office

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December 3, 2018

Denise Sloan
Regulatory Branch, CESWG-PE-RE
U. S. Army Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229

Dear Ms. Sloan:

The U.S. Fish and Wildlife Service (Service) has reviewed a Public Notice, dated November 1, 2018, for Department of the Army, U.S. Army Corps of Engineers (USACE), and Texas Commission on Environmental Quality (TCEQ), Permit Application SWG-2015-00175. The applicant, Texas LNG Brownsville, LLC (Texas LNG), has requested authorization to construct, install, operate, and maintain structures and equipment for liquefaction and export of natural gas. The approximately 625-acre site for the export facility site is located on the north side of the Brownsville Ship Channel, approximately five miles southwest of the Gulf of Mexico and 19 miles northeast of the City of Brownsville on State Highway 48, in Cameron County, Texas. The proposed terminal/gas supply pipeline is located along an approximately 10.2 mile-long corridor, interconnecting with and primarily paralleling the existing Valley Crossing Pipeline, in Cameron County, Texas.

This report was prepared under the authority of and in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). It represents the coordinated views of the Department of the Interior. The recommendations in this report have been coordinated with representatives of the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (TGLO), the Texas Commission on Environmental Quality (TCEQ), the National Marine Fisheries Service (NMFS), and the Environmental Protection Agency (EPA).

The permit application indicates you have determined that the proposed action would affect federally listed species or critical habitat. The Service agrees with this assessment and will continue consultation with the lead federal agency, the Federal Energy Regulatory Commission (FERC). The Service notes that the Draft Environmental Impact Statement, dated October 26, 2018, states: Natural gas would be delivered to the Texas LNG Project site via a non-

jurisdictional intrastate, 30-inch-diameter natural gas pipeline that would be constructed, owned, and operated by a third party, separate from Texas LNG. Texas LNG provided a Biological Assessment (BA), Appendix D of the DEIS, evaluating the impacts of the export facility on federally listed threatened and endangered species. The BA does not include the supply pipeline; therefore, the Service recommends that the USACE initiate consultation for impacts of the proposed supply pipeline under section 7 of the Endangered Species Act. When consultation has been completed with FERC for the export facility, the agreed upon conservation measures for federally listed species or critical habitat within wetlands and waters of the United States will be incorporated into an authorized USACE permit along with any conservation measures resulting from consultation for the supply pipeline.

The USACE notes that no jurisdictional determination for the proposed gas supply pipeline has been issued. The Service requests a copy of the verified wetland delineation when it has been completed. The supply pipeline is proposed to be constructed using conventional open-cut methods, except at San Martin Lake and the Bahia Grande areas where horizontal directional drilling would be employed. The applicant states that there would be no permanent fill, but that 56.3 acres of jurisdictional wetlands would be temporarily filled for installation of the pipeline. According to the public notice, during construction, soil would be excavated and placed alongside the pipeline trench and replaced following installation, removing excess subsoil from wetlands. The avoidance and minimization section of the public notice does not indicate that Texas LNG evaluated any construction measures that could reduce the proposed impacted 56.3 acres by, for example, strategic placement of excavated soil on adjacent uplands rather than in wetlands. The typical cross-section drawings on sheet 2 of 26 of the project plans indicate that topsoil and subsoil would be side-cast on opposite sides of the pipeline trench. The Service assumes this is the proposed plan for the entire length of the supply pipeline. Additionally, the Service is concerned that the permit application's Conceptual Mitigation Plan does not include a restoration plan, nor monitoring of the wetlands proposed to be impacted by pipeline construction. The Service recommends development of a plan that includes restoration practices to be employed and monitoring to track, post-construction, if the impacts of the pipeline installation are actually temporary. We request that the restoration and monitoring plan be provided to the Service and other resource agencies for review and comment. Should restoration efforts not be successful, compensatory mitigation should be required.

The Conceptual Mitigation Plan, dated March 2016, outlines proposed impacts of the construction of the Texas LNG export facility on jurisdictional waters and wetlands. The USACE approved Texas LNG's wetland delineation in January 2016. Construction of the export facility on the 625-acre site is proposed to permanently impact 74.2 acres of jurisdictional wetlands and waters, and temporarily impact 8.9 acres. The Texas LNG export facility layout incorporates design features that avoid direct impacts to palustrine and estuarine wetlands within the project site; however, neither the public notice nor the Conceptual Mitigation Plan clearly identifies, by habitat type, acres of wetlands that would be impacted, acres that would be temporarily impacted, or acres that would be avoided. The Service recommends that a summary table be prepared for this information. The Service recommends that the applicant's mitigation plan incorporate a plan for post-construction monitoring of the proposed avoided wetlands within the project site, and monitoring reports be provided for review so that the USACE can determine if secondary impacts accrue to those wetlands from the facility's construction and operation. The

Service noted on Texas LNG's March 2016 Resource Report 2 that dredging the marina docking facility could allow increased tidal flows to the adjacent flats. We recommended that the applicant include these effects in the environmental analysis for the project, as increased tidal flow could be a beneficial influence to unvegetated areas and could provide improved foraging habitat for shorebirds. Surveying of the baseline conditions in these areas, including current shorebird use, would be essential to documenting any changes post-construction.

As mitigation for unavoidable direct impacts of the construction of the export facility, Texas LNG proposes to preserve in perpetuity at least 405 acres of tidal wetlands in the Los Lomas Ecological Preserve that is owned by the Brownsville Navigation District (BND) and leased to the Service until 2023. The permit application does not include the applicant's alternatives analysis that evaluated other forms of compensatory mitigation, which is essential to supporting the applicant's preferred mitigation plan including an analysis of the sequential assessment of potential mitigative alternatives to avoid, minimize, rectify, reduce, and then compensate for impacts of the project. The alternatives analysis should also document how the proposed mitigation plan supports the national goal of no net loss of wetland acreage and function. The mitigation plan needs to include how the preferred mitigation alternative will, if authorized, be protected in perpetuity or the specifics steps that will be followed to restore in the project area all of the impacted resources to pre-project functions and values after the life of the project has been completed. The applicant states: The Mitigation Site will match watershed priorities with a high-quality Waters of the U.S. under threat of development. Although the Service agrees that all properties owned by the BND are under threat of development, the applicant's proposal for only preservation as mitigation for impacts to jurisdictional wetlands and waters does not meet requirements stipulated in the 2008 Mitigation Guidelines.

The Service recommends:

1. Permit Application SWG-2015-00175 not be authorized as proposed,
2. The USACE provide the Service with a copy of the verified wetland delineation for the supply pipeline when it has been completed,
3. The applicant develop a plan that includes post-restoration monitoring of the supply pipeline, to track post-construction restoration and the impacts that Texas LNG indicates would be temporary,
4. The pipeline restoration and monitoring plan be provided to the Service and other resource agencies for review and comment,
5. For the export facility, the applicant provide in a table, by habitat type and acres, the wetlands that are proposed to be permanently impacted, temporarily impacted, and avoided,
6. The applicant develop a plan for post-construction monitoring of the proposed avoided wetlands within the export facility site, and that reports of that monitoring be provided for review so that the USACE can determine if secondary impacts accrue to those wetlands from the facility's construction and operation,
7. The applicant submit an alternatives analysis that addresses the sequential assessment of potential mitigative alternatives, how preferred mitigation supports the national goal of no net loss of wetlands under the 2008 Mitigation Guidelines,

8. The USACE consult with the Service on the supply pipeline separately from the consultation with FERC on the export facility,
9. The USACE not proceed with evaluation of a permit for this project until the above information has been provided for review and comment, and
10. Should USACE determine that issuance of a permit for the proposed project is in the public interest, that it delay authorization of a permit for this project until consultation between FERC and the Service has been completed and the findings of that consultation, as appropriate, are incorporated into the issued permit.

Thank you for the opportunity to review the proposed project. If you have questions or concerns regarding our comments and recommendations, please contact Pat Clements at pat_clements@fws.gov, or by phone at 361-225-7316.

Sincerely,



Charles Ardizzone
Field Supervisor

cc:

W. Cupit, Coastal Fisheries, TPWD, Brownsville, TX
R. Swafford, Habitat Conservation Division, NMFS, Galveston, TX
P. Kaspar, Region 6 EPA, Dallas, TX
G. Gray, 401 Coordinator, TCEQ, Austin, TX
A. Nunez, Coastal Field Operations, Corpus Christi, TX